

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; the Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; Special Rapporteur on minority issues; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 37/12, 1993/2A, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the adoption of the new *Basic Law: Israel as the Nation-State of the Jewish People* by the Israeli Knesset, on 19 July 2018. A previous version of this law, when it was still in the form of a Draft Bill, was also the subject of a communication to your Excellency's Government sent on 21 June 2017 (OL ISR 7/2017) to which we have yet to receive a reply.

According to the information received:

The new *Basic Law: Israel as the Nation State of the Jewish People* (hereafter "the Nation State Law") was adopted by vote in the Israeli Knesset, on 19 July 2018, with 62 members in favour and 55 against.

As a Basic Law, once adopted, the Nation State Law has been added to the central body of legislation that is equivalent to Israel's constitution and thus takes precedence over ordinary laws. Moreover, as the Nation State Law purports to define the constitutional identity of the State of Israel, it may be used to take precedence over other Basic Laws such as the 1992 Basic Law on Human Dignity and Liberty.

Furthermore, while the Nation State Law affirms the exclusively Jewish character of the State of Israel and Jewish historical, religious and cultural traditions, it is silent with regard to key areas of protection and promotion of minority rights and leaves certain of these aspects contingent upon future legislative measures.

In particular, several provisions of the Law appear to discriminate against the racial, ethnic, religious and linguistic minorities of Israel, thus threatening the status of the members of these minorities as equal citizens of Israel.

Article 1(a) provides that “The land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established”. Article 1(b) affirms that Israel is “the nation-state of the Jewish people, in which [the Jewish people] realizes its natural, cultural, religious and historical right to self-determination.” This article sets the spirit and purpose of the Law, by affirming the clear pre-eminence of citizens of Jewish descent over all other citizens belonging to other groups. This Article only provides formal recognition to the Jewish people of the State of Israel, a pre-eminence that establishes a hierarchy between the majority and minority population, and may therefore be considered discriminatory against non-Jewish citizens.

Furthermore, Article 1(c) provides that “the exercise of the right to national self-determination in the State of Israel is unique to the Jewish People”, which contravenes the general principle of self-determination set out in both the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, thus denying a fundamental right of non-Jewish citizens.

Article 3 states that Jerusalem, complete and united, is the capital of Israel. This is in violation of numerous United Nations Security Council and General Assembly resolutions, which consider that all legislative and administrative measures and actions taken by Israel, which tend to change the legal status of Jerusalem are invalid and cannot change that status, and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

Moreover, Article 4 of the Law stipulates that Hebrew is the State language of Israel. The Arabic language is granted “special status”, but loses its official status, which was established by Article 82 of the 1922 King’s Order in Council on the Land of Israel. The Law therefore provides for the pre-eminence of the Hebrew language over all other languages in the country, and in particular diminishes the status and therefore usage of the Arabic language, whose status is not clarified in this law but is to be determined by a separate law. Furthermore, the law does not provide guarantees with regard to the use of minority languages, in particular the Arabic language, in education or the provision of services administrated by the State.

Article 5 stipulates that Israel will be “open for Jewish immigration and for the ingathering of the exiles”. The wording of this article may further encourage the development and application of discriminatory immigration policies by the Israeli authorities, in particular with regard to the immigration of non-Jews.

Article 7 of the Law stipulates that “Jewish settlement” is a “national value” which needs to be encouraged and promoted. This can be seen to implicitly encourage segregation on the basis of ethnicity, language or religion, which may serve to support the development of residential areas and settlements reserved

only for Jewish people that would restrict the freedom of movement and access to housing to members of other minority communities. Moreover, this provision due to its vague wording could be viewed as an endorsement to develop Jewish settlements, including in the Occupied Palestinian Territories, in direct violation of international law. This concern is further compounded by the reference in Article 1(a) to the Land of Israel, where the State of Israel is established, without any definition of its boundaries.

Finally, Articles 9 and 10 of the Law provide for the national holidays and the days of rest. Specifically, Article 10 stipulates that “The Sabbath and the Jewish holidays are the established days of rest in the State; non-Jews have the right to observe the days of rest on their days of Sabbath and holidays; details regarding this matter shall be determined by law.” However, those articles do not make specific reference to the right of minorities regarding any holiday or Memorial Day celebrated by them.

We wish to express our deep concern over the recent adoption by the Israeli Knesset of the *Basic Law: Israel as the Nation-State of the Jewish People*, which appear to be discriminatory in nature and in practice against non-Jewish citizens and other minorities and does not apply the principle of equality between citizens, which is one of the key principles for democratic political systems. The law as adopted offers a legal basis for the pre-eminence of Jewish people over non-Jewish citizens who are members of other ethno-religious and linguistic minority groups, and creates a legal order and an environment that could potentially lead to further discriminatory legislative and/or policy actions, which contravene the international human rights obligations of Israel.

We express further concern that this Law does not explicitly incorporate the principle of equality and non-discrimination, ensuring equal treatment for all persons within Israel’s territory and who are subject to its jurisdiction, as per international human rights standards. The absence of specific provisions regarding equality and non-discrimination may have grave and harmful consequences for equality and the enjoyment of human rights without discrimination by all groups in the country.

In this context, we wish to recall Your Excellency’s Government’s commitments under articles 1, 2, 12, 14, 24, 26, and 27 of the ICCPR, to which Israel has been a State Party since 3 October 1991, which provide for the right of all peoples to self-determination, the principles of non-discrimination, the liberty of movement and freedom to choose residence, the right to a fair and public hearing, the right to acquire a nationality, and the right of persons belonging to ethnic, religious or linguistic minorities to enjoy, in community with the other members of their group, their own culture, to profess and practice their own religion, or to use their own language. Furthermore, we refer to Israel’s commitments under articles 1, 2, 11 and 15 of the ICESCR, to which Israel has been a State Party since 3 October 1991, which stipulate the right of all peoples to self-determination, the principle of non-discrimination, the right of everyone to an adequate standard of living, including access to adequate housing, as well as the right of everyone to take part in cultural life without discrimination.

In light of the above-mentioned provisions of the Law, we would like to recall Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination to which Israel has been a State Party since 3 January 1979, which calls on States to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations, which have the effect of creating or perpetuating racial discrimination whenever it exists”. Furthermore, Article 3 calls on States Parties to prevent, prohibit and eradicate racial segregation and apartheid-like practices in their own territories.

Furthermore, we would like to draw the attention of your Excellency’s Government to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. In its article 1.1, the Declaration requires that States protect the existence and the national or ethnic, cultural or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1 stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We would also wish to reiterate that International humanitarian law applies to the entirety of the Occupied Palestinian Territory, in other words to Gaza and the West Bank, including East Jerusalem. In its resolution 2334 (2016), the Security Council reaffirmed that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law. The same determination has been made by the General Assembly, most recently in Resolution 72/86, and the International Court of Justice, as regards settlement activities in the Occupied Palestinian Territory. Settlements amount to the transfer of the population of Israel into the territory it occupies, which is prohibited under article 49 of the Fourth Geneva Convention. The transfer of an occupying power’s population to a territory it occupies amounts to a war crime that may engage the individual criminal responsibility of those involved (Rome Statute Article 8(2)(b)(viii)).

Lastly, the Law contradicts Israel’s own founding text, the Declaration of the Establishment of the State of Israel, which provides that “it will ensure complete equality of social and political right to all its inhabitants irrespective of religion, race or sex [and] guarantee freedom of religion, conscience, language, education and culture”.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have with regard to the *Basic Law: Israel as the Nation State of the Jewish People* and its adoption by the Israeli Knesset;
2. Please indicate the measures that the Government of Israel is intending to undertake in order to ensure a future revision of the Law with the view to repealing its discriminatory provisions and aligning it with Israel's international human rights obligations, in particular with regard to the protection and promotion of the rights of persons belonging to racial, ethnic, religious or linguistic minorities;
3. Please indicate the impact of Article 5 of the Law on the current immigration procedures in Israel, on how Jewish and non-Jewish immigrants are dealt with under current procedures, and how such provision may affect the immigration status determination of non-Jews;
4. Please provide updated and detailed information on any legislative and policy measure undertaken by the Government of Israel to promote and protect the civil, political, economic, social and cultural rights of persons belonging to racial, ethnic, religious and linguistic minorities;
5. Please provide further information on Article 7, and particularly whether it will or not contribute to potential segregation on the basis of ethnicity or religion, and whether it is an endorsement to develop Jewish settlements, including in the Occupied Palestinian Territory, in direct violation of international law;
6. Please clarify the consequences of the new status of the Arabic language, and the impact if any on its use for official purposes, including on public signs, in public institutions including social and health services and in the education system.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Finally, we would like to inform your Excellency's Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the searchable communications database.

Please accept, Excellency, the assurances of our highest consideration.

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